



Comptroller General
of the United States

Washington, D.C. 20548

148704
Bednarz

Decision

Matter of: Olin Corporation

File: B-252154

Date: March 9, 1993

George H. Pain for the protester.
Matthew S. Perlman, Esq., Arent, Fox, Kintner, Plotkin & Kahn, for PMX Industries, Inc., an interested party.
Samuel D. Kreiter, Esq., Department of the Treasury, for the agency.
Christine F. Bednarz, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The General Accounting Office will not consider a protest based on an allegation of improper government disclosure of proprietary information 11 years ago, since the protest does not involve the disclosure of information in the present solicitation.

DECISION

Olin Corporation protests the award of a contract to PMX Industries, Inc. under solicitation No. USM-87-8001-93-1, issued by the Department of the Treasury, United States Mint, for the processing, fabrication, and delivery of cupro-nickel, 5-cent strip. The protester contends that PMX secured the award of this contract by unlawfully obtaining Olin proprietary information from a United States Mint employee, and that this alleged impropriety requires the contract's termination.

We dismiss the protest.

The agency issued the solicitation on September 14, 1992, and made award to PMX on or about January 20, 1993. Olin, a disappointed offeror, attributes PMX's victory to an alleged leak of Olin manufacturing secrets by a United States Mint employee sometime in 1981.¹ Olin apparently has never before taken legal action against the United States Mint or

¹PMX denies that the United States Mint employee divulged any such proprietary information or that PMX's manufacturing technology is traceable to Olin in any way.

PMX for the alleged unauthorized disclosure.² Olin now seeks to bar PMX from receiving award under the current solicitation by alleging a trade secrets leak that occurred over 11 years ago.

We decline to review the merits of the protest. In order for our Office to consider a protest based upon government disclosure of proprietary information, the protester must establish that the solicitation itself discloses the allegedly confidential information. See Aeronautical Instrument and Radio Co., B-224431.3, Aug. 7, 1986, 86-2 CPD ¶ 170. Where, as here, the alleged disclosure occurs outside the issuance of this solicitation, the protest is inappropriate for our consideration, as we have no basis to fashion a remedy to eradicate the claimed competitive advantage in the present procurement. White Machine Co., B-206481, July 28, 1982, 82-2 CPD ¶ 89. In cases of wrongful disclosure of proprietary data, the aggrieved party can seek any applicable judicial redress against the government or an administrative settlement of its claim. See Garrett Pneumatic Sys. Div., B-207213, et al., May 6, 1982, 82-1 CPD ¶ 435. To the extent that Olin's protest concerns PMX's right to offer a product in which Olin claims a proprietary interest, this is essentially a dispute between private parties, over which the courts, not our Office, retain jurisdiction. Id.; Aeronautical Instrument and Radio Co., supra. Finally, insofar as Olin claims that PMX cannot be regarded as a responsible contractor owing to the alleged trade secrets violation, this is a matter of affirmative responsibility, which our Office will not consider except in circumstances not alleged here. Garrett Pneumatic Sys. Div., supra.

The protest is dismissed.



James A. Spangenberg
Assistant General Counsel

²Olin representatives did testify on behalf of the United States Mint at the implicated employee's Merit Systems Protection Board hearing in September 1984, which affirmed the United States Mint's 30-day suspension of the employee.